

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Hebert	Team: Squad #2	CCRB Case #: 201806761	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 03/19/2018 12:30 AM	Location of Incident: 2090 Morris Avenue	Precinct: 46	18 Mo. SOL 9/19/2019	EO SOL 9/19/2019	
Date/Time CV Reported Thu, 08/16/2018 11:45 AM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 08/16/2018 11:45 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christopher Chin	20543	958402	046 PCT
2. POM Justin Ortiz	07862	959020	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Fausto Ramirez	10218	956787	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christopher Chin	Abuse: Police Officer Christopher Chin stopped § 87(2)(b)	
B.POM Justin Ortiz	Abuse: Police Officer Justin Ortiz stopped § 87(2)(b)	
C.POM Justin Ortiz	Abuse: Police Officer Justin Ortiz interfered with § 87(2)(b)'s use of a recording device.	
D.POM Christopher Chin	Abuse: Police Officer Christopher Chin frisked § 87(2)(b)	
E.POM Justin Ortiz	Abuse: Police Officer Justin Ortiz frisked § 87(2)(b)	
F.POM Justin Ortiz	Abuse: Police Officer Justin Ortiz refused to provide his shield number to § 87(2)(b)	
G.POM Justin Ortiz	Abuse: Police Officer Justin Ortiz refused to provide his name to § 87(2)(b)	

## Case Summary

On August 16, 2018, § 87(2)(b) filed this complaint with the CCRB in-person.

On March 19, 2018, at approximately 12:30 a.m., § 87(2)(b) was walking with his friend, § 87(2)(b) in the vicinity of 2090 Morris Avenue in the Bronx when an unmarked police car approached them. Inside the vehicle were Police Officer Justin Ortiz, Police Officer Christopher Chin, and Police Officer Fausto Ramirez of the 46<sup>th</sup> Precinct.

Police Officer Christopher Chin and Police Officer Justin Ortiz exited the vehicle and approached § 87(2)(b) and § 87(2)(b) with Police Officer Chin stopping § 87(2)(b) and Police Officer Ortiz stopping § 87(2)(b) (**Allegations A and B – Abuse of Authority – Stop, § 87(2)(g)**). Police Officer Ortiz allegedly told § 87(2)(b) not to record a video of the incident (**Allegation C – Abuse of Authority – Interference with recording, § 87(2)(g)**). Police Officer Chin frisked § 87(2)(b) (**Allegation D – Abuse of Authority – Frisk, § 87(2)(g)**). Police Officer Ortiz frisked § 87(2)(b) (**Allegation E – Abuse of Authority – Frisk, § 87(2)(g)**).

§ 87(2)(b) asked for Police Officer Ortiz’s name and shield number, which he did not provide. Police Officer Ortiz then used his hand to cover his shield (**Allegation F – Abuse – Refusal to provide shield number, § 87(2)(g)**) (**Allegation G – Abuse – Refusal to provide name, § 87(2)(g)**)

Video footage of this incident, consisting of cell phone videos recorded on § 87(2)(b)’s cell phone during the incident, was provided to the CCRB by § 87(2)(b) (Board Review 01 and 02). The videos are attached to IA #s 4 and 6 and summarized in IA # 16 (Board Review 16). Relevant portions of video footage are embedded in the relevant sections below.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Christopher Chin stopped § 87(2)(b)**

**Allegation (D) Abuse of Authority: Police Officer Christopher Chin frisked § 87(2)(b)**

§ 87(2)(b) was interviewed at the CCRB on August 16, 2018. Police Officer Ortiz and Police Officer Chin were interviewed at the CCRB on October 17, 2018. § 87(2)(b) did not respond to the CCRB’s contact attempts.

It is undisputed that Police Officer Chin stopped and frisked § 87(2)(b)

§ 87(2)(b) stated that he and § 87(2)(b) noticed a police vehicle driving slowly alongside them such that it appeared to be following them as they walked northward on Morris Avenue. § 87(2)(b) began video recording this vehicle on his cell phone. The vehicle sped up so that it was driving at a “normal” speed, and it drove past § 87(2)(b) and § 87(2)(b) and turned left onto East 181<sup>st</sup> Street. § 87(2)(b) stopped video recording. § 87(2)(b) saw the police vehicle turn left from East Burnside Avenue back onto Morris Avenue. When § 87(2)(b) and § 87(2)(b) reached 2090 Morris Avenue, the vehicle drove up next to them again at a “normal” speed, and § 87(2)(b) started video recording again. The car parked and Police Officer Chin and Police

Officer Ortiz exited and approached § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) provided the CCRB with two videos of this incident. One 20-second video captures part of the time when the officers are driving alongside § 87(2)(b) and § 87(2)(b) and an approximately four-minute-long video starts when officers are already on the sidewalk interacting with them. The 20-second-long video depicts § 87(2)(b) and § 87(2)(b) on the sidewalk of Morris Avenue, with § 87(2)(b) pointing the camera at Police Officer Chin's and Police Officer Ortiz's vehicle as it slowly drives alongside them. In the video, both § 87(2)(b) and § 87(2)(b) acknowledge the presence of the officers nearby, and § 87(2)(b) states that officers are following him "as always" as he walks home.

Police Officer Chin stated that, while in the front passenger's seat of the police vehicle, he noticed § 87(2)(b) on the sidewalk on his right. § 87(2)(b) was standing with his hands completely inside his waistband, and his hands were moving around inside his waistband with his forearms exposed. Police Officer Chin's view of § 87(2)(b) was not obstructed by anything. Police Officer Chin observed that § 87(2)(b) was standing next to § 87(2)(b) who Police Officer Chin immediately recognized as an individual who previously (within the year prior) used § 87(2)(b). Police Officer Chin knew this because he had taken a police report in regard to the incident. (Police Officer Chin knew what § 87(2)(b) looked like because after § 87(2)(b) was arrested for the robbery, Police Officer Chin saw § 87(2)(b) photograph at the 46<sup>th</sup> Precinct stationhouse.) § 87(2)(b) appeared to be leaning against a parked vehicle and was visible from "head to toe" but was partially concealed such that Police Officer Chin could see § 87(2)(b) front and right side but not his left side or his back. As Police Officer Chin observed § 87(2)(b) and § 87(2)(b) it was dark outside and there was "enough" light for Police Officer Chin to be able to recognize § 87(2)(b).

Police Officer Chin heard § 87(2)(b) say to § 87(2)(b) something to the effect of, "Don't run. We don't have anything." Police Officer Chin provided information to Police Officer Ortiz about what he observed, which ultimately led them to decide to stop and exit the vehicle after Police Officer Chin had observed § 87(2)(b) and § 87(2)(b) from the vehicle for approximately 10 seconds in total. As § 87(2)(b) saw that Police Officer Chin and Police Officer Ortiz were exiting the vehicle and approaching, § 87(2)(b) looked up at the officers and appeared "startled."

As Police Officer Chin was approaching the sidewalk, and while § 87(2)(b) was still leaning against the parked vehicle, § 87(2)(b) walked "really close" to § 87(2)(b) toward the vehicle behind which § 87(2)(b) was partially concealed, and appeared to hand § 87(2)(b) a small, graspable black or dark-colored object (which Police Officer Chin could not describe any further) by moving his hands from his waist area toward § 87(2)(b) waist area. Police Officer Chin saw "what appeared to be the object" in § 87(2)(b)'s hands while § 87(2)(b) was "really close" to § 87(2)(b) and Police Officer Chin never saw the object in § 87(2)(b) hands. As § 87(2)(b) moved closer to § 87(2)(b) § 87(2)(b)'s hands and front became obstructed by the parked vehicle. Although § 87(2)(b)'s hands were obstructed, Police Officer Chin believed § 87(2)(b) was moving his hands away from his body because he saw § 87(2)(b)'s arms moving away from his body. Police Officer Chin did not see whether § 87(2)(b) "actually" handed the

object to § 87(2)(b) but he “just suspected it.” As Police Officer Chin and Police Officer Ortiz approached § 87(2)(b) he put his hands in his pockets. Either Police Officer Chin or another officer told § 87(2)(b) to remove his hands from his pockets and § 87(2)(b) did so.

Police Officer Chin stopped § 87(2)(b) because the area had robberies and shootings “sometimes” and because he was concerned that § 87(2)(b) might be concealing a weapon based on having seen § 87(2)(b) reach in his waistband and then step close to § 87(2)(b) and appear to hand him something that he could not see clearly. Police Officer Chin frisked § 87(2)(b) because of this suspicion that § 87(2)(b) had a weapon.

Police Officer Chin frisked § 87(2)(b) jacket pockets in his lower torso area, his waistband area, and both of his legs from his waist to his ankles. Police Officer Chin frisked § 87(2)(b) leg area because if he had put something in his waistband, it could have dropped down into his pants. Police Officer Chin did not feel anything as he frisked § 87(2)(b) and did not find any weapons on § 87(2)(b).

Police Officer Chin prepared Stop and Frisk Report STP-2018-§ 87(2)(b) (Board Review 03) in regard to this incident. The report states that Police Officer Chin stopped § 87(2)(b) after a period of observation lasting 10 minutes. The factor listed as leading to the stop was concealing or possessing a weapon and the suspected crime was criminal possession of a weapon. The narrative states that an unspecified officer observed a heavyset black male wearing a red jacket and black pants (identified as § 87(2)(b) by Police Officer Chin during his CCRB interview) with his right hand in his waistband, seemingly adjusting a possible weapon multiple times. Then § 87(2)(b) noticed officers and stated to § 87(2)(b) “Don’t run, we don’t have nothing, we good.” § 87(2)(b) then stepped closely to § 87(2)(b) who was partially concealed behind a parked vehicle, seeming to have possibly handed off an object to § 87(2)(b). Officers then exited the vehicle and approached § 87(2)(b) and § 87(2)(b) and instructed § 87(2)(b) to remove his hands from his pockets. The report states that Police Officer Chin frisked § 87(2)(b) jacket pockets and pants for a weapon because he was known to carry weapons and because an officer observed an object suspected of being a weapon.

People v. Debour, 40 N.Y. 2d 210 (1976) (Board Review 04) states that, in order for a stop to be justified, an officer must have reasonable suspicion that the person has committed, is committing, or is about to commit a crime. People v. Debour also established that an officer must have a reasonable suspicion that a person is armed in order to frisk that person. Furthermore, according to People v. Fernandez, 928 N.Y.S. 2d 293 (2011) (Board Review 08), seeing a person’s hand at his or her waistband, without any indication of a weapon, such as a visible outline of a gun, does not provide an officer with reasonable suspicion that the person is armed. In People v. Marine, 142 A.D. 2d 368 (1989) (Board Review 05), officers did not possess reasonable suspicion after observing a male walking in a “suspicious” manner in a “drug-prone” location while adjusting an object in his waistband area without observing a bulge of a specific shape in the male’s clothing. In People v. Johnson, 64 N.Y.2d 617 (1984) (Board Review 06), officers’ knowledge of an individual’s past criminal record and presence in the same neighborhood was not sufficient to provide reasonable suspicion to stop that individual. In People v. Gerard, 94 A.D. 3d 592 (2012) (Board Review 07), the existence of the following factors did not provide officers with reasonable suspicion: “(1) defendant’s presence in a ‘drug and gun prone location at approximately 2:45

a.m.; (2) the weighted-down appearance of the left side of defendant's unzipped jacket; (3) defendant's change in course after he noticed the police officers...(4) defendant's act of blading his body...(5) the bulge in the defendant's weighted-down pocket; (6) defendant speaking into a phone in a fast cadence."

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (B) Abuse of Authority: Police Officer Justin Ortiz stopped** § 87(2)(b)  
**Allegation (E) Abuse of Authority: Police Officer Justin Ortiz frisked** § 87(2)(b)

It is undisputed that Police Officer Ortiz stopped and frisked § 87(2)(b)

Police Officer Ortiz stated that leading up to this incident, his sergeant had instructed him every day to pay special attention to the area on Morris Avenue (the entirety of the street running through the 46<sup>th</sup> Precinct) because it was a location where robberies commonly occurred. Police Officer Ortiz was also aware of "numerous" robberies having occurred in that same area, based on 911 calls the 46<sup>th</sup> Precinct had received in an unspecified period leading up to this date. As he was driving the police vehicle on Morris Avenue, Police Officer Ortiz was informed by Police Officer Chin that he observed § 87(2)(b) on the sidewalk adjusting his waistband and passing an

unspecified object to § 87(2)(b). Police Officer Ortiz did not personally observe § 87(2)(b) adjusting his waistband. In response to receiving this information, Police Officer Ortiz slowed down the vehicle and turned his attention toward the sidewalk. Police Officer Chin continued observing the individuals on the sidewalk for “a matter of seconds,” after which Police Officer Ortiz stopped the vehicle and both Police Officer Chin and Police Officer Ortiz exited the vehicle. Police Officer Ortiz stopped the vehicle and then stopped § 87(2)(b) solely because of the information Police Officer Chin had given him.

Police Officer Ortiz stated that he did not recall whether he, at any point during the incident, saw § 87(2)(b) touching his waistband or moving his hands toward his waistband. As Police Officer Ortiz approached the sidewalk, § 87(2)(b) began to walk away. Police Officer Ortiz stopped and frisked § 87(2)(b) for weapons because Police Officer Chin had informed him that he had seen § 87(2)(b) adjusting his waistband and because it was a robbery-prone location. Police Officer Ortiz did not frisk § 87(2)(b) for any other reason and had no other specific reason to believe that § 87(2)(b) had a weapon.

Police Officer Ortiz prepared Stop and Frisk Report 2018-§ 87(2)(b) (Board Review 03) in regard to this incident. The report states that Police Officer Ortiz stopped § 87(2)(b) after a period of observation lasting minutes. The factor listed as leading to the stop was concealing or possessing a weapon and the suspected crime was criminal possession of a weapon. The report states that § 87(2)(b) said, “Don’t run we don’t have anything good.” The narrative of the report states that Police Officer Chin informed Police Officer Ortiz that he had observed an individual (identified as § 87(2)(b) by Police Officer Ortiz during his CCRB interview when presented with the Stop and Frisk Report) adjusting his waistband multiple times behind a parked vehicle, leading to the initial stop. § 87(2)(b) appeared to be passing something off to another individual (identified as § 87(2)(b) by Police Officer Ortiz during his CCRB interview when presented with the Stop and Frisk Report) in a high prone location for robberies. The report states that upon approach, § 87(2)(b) began to walk away from Police Officer Ortiz, then Police Officer Ortiz took a few steps and asked if everything was okay and observed “what appeared to be” § 87(2)(b) getting close to § 87(2)(b) with “a lot of movement.” The listed reason for Police Officer Ortiz’s subsequent frisk of § 87(2)(b) was the observation of an object that was suspected of being a weapon.

During his CCRB interview, after being presented with the Stop and Frisk report he prepared, Police Officer Ortiz affirmed that during the incident, he observed “what appeared to be” § 87(2)(b) get close to § 87(2)(b) with “a lot of movement.” Police Officer Ortiz specified that by “movement,” he meant that § 87(2)(b) was moving his hands “very rapidly” “in the direction of his body.” Police Officer Ortiz did not recall where § 87(2)(b)’s hands were in relation to his body. Police Officer Ortiz was unable to describe the nature of these movements any further during his CCRB interview. Those movements contributed to Police Officer Ortiz’s belief that either § 87(2)(b) or § 87(2)(b) might have a weapon, although, when asked during his CCRB interview, Police Officer Ortiz was unable to clarify what about these movements contributed to this belief.

Police Officer Ortiz’s Stop and Frisk Report attributes a particular quote to § 87(2)(b) and states that § 87(2)(b) adjusted his waistband and then appeared to pass an object to § 87(2)(b).

§ 87(2)(g)

Police Officer Ortiz, by his own admission, did not personally observe the circumstances leading to the stop.

Initially during his CCRB interview, Police Officer Ortiz only described the information that Police Officer Chin provided to him as the basis for stopping and frisking § 87(2)(b). After being presented with the Stop and Frisk Report that he had prepared, Police Officer Ortiz articulated that he saw § 87(2)(b) “move his hands rapidly in the direction of his body” and that this contributed to his suspicion that § 87(2)(b) might be armed. Furthermore, Police Officer Ortiz was unable to describe the movement in any detail and unable to elaborate on how the movement was suspicious rather than innocuous.

Police Officer Ortiz had only been told by Police Officer Chin that an unspecified object was passed between § 87(2)(b) and § 87(2)(b) and that one of the individuals had adjusted his waistband. Police Officer Ortiz did not describe any additional circumstances which would reasonably elevate his suspicion of § 87(2)(b) leading up to the stop or during the encounter.

Police Officer Ortiz stated that, as he and Police Officer Chin approached, § 87(2)(b) walked away from him. In People v. Martinez, 80 N.Y.2d 444 (Board Review 09), the court clarified that flight from police, alone, cannot provide the reasonable suspicion to justify even a stop. Furthermore, as discussed in **Allegation A**, in People v. Marine (Board Review 05), the court ruled that an individual adjusting his waistband in a crime-prone area does not alone provide an officer with reasonable suspicion to stop the individual. § 87(2)(g)

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Justin Ortiz interfered with** § 87(2)(b)

§ 87(2)(b) s video recording.

§ 87(2)(b) stated that, as Police Officer Ortiz approached him, Police Officer Ortiz told him to put his phone away and stop video recording. § 87(2)(b) responded that he was not going to put his phone away and that he was recording, and he continued to record.

Police Officer Ortiz stated that he did not recall whether he ever told § 87(2)(b) or § 87(2)(b) to stop recording a video.

Police Officer Chin stated that he did not recall whether there was any discussion of § 87(2)(b) or § 87(2)(b) having their phones out or whether § 87(2)(b) was recording a video during the incident.

The four-minute video that § 87(2)(b) provided to the CCRB starts with § 87(2)(b) saying, “I don’t want to put my phone away.” Approximately 90 seconds later in the same video, Police Officer Ortiz says, “You’re allowed to record, but just at a distance, okay?” The video does not capture Police Officer Ortiz telling anyone not to record a video.

§ 87(2)(g)  
[REDACTED]

**Allegation (F) Abuse of Authority: Police Officer Justin Ortiz refused to provide his shield number to § 87(2)(b)**

**Allegation (G) Abuse of Authority: Police Officer Justin Ortiz refused to provide his name to § 87(2)(b)**

§ 87(2)(b) stated that, after frisking him, Police Officer Ortiz returned to the police vehicle with his identification card. As Police Officer Ortiz exited the vehicle and approached him to return his identification to him, § 87(2)(b) asked Police Officer Ortiz for his “ID” and shield number. Immediately after § 87(2)(b) made this request, Police Officer Ortiz placed his hand over his shield number so that it was not visible and then turned around and walked back to the vehicle.

Police Officer Ortiz stated that he did not recall § 87(2)(b) ever asking him for his shield number. Police Officer Ortiz did not at any point make any physical movements designed to prevent § 87(2)(b) from seeing his shield. Police Officer Ortiz did not recall whether § 87(2)(b) or anyone else present ever accused him of having covered his shield.

Police Officer Chin stated that he did not see Police Officer Ortiz intentionally cover his shield or



do anything that would have covered his shield. Police Officer Chin did not know whether § 87(2)(b) or § 87(2)(b) ever accused Police Officer Ortiz of covering his shield.

In a video that § 87(2)(b) provided to the CCRB, approximately fifteen seconds into the excerpt that is embedded below, while Police Officer Ortiz is standing behind him and frisking him, § 87(2)(b) says, “Can I get somebody’s badge number and everything – name and everything.”



201806761\_20181218\_1501\_DM.mp4

Approximately 40 seconds later in the same video, as shown in the excerpt that is embedded below, as the officers have begun walking away to return to their vehicle, § 87(2)(b) says, “I need a badge number – everything. I need everything. I need everything.” Approximately ten seconds later, while § 87(2)(b) is still on the sidewalk and Police Officer Ortiz is standing next to the driver’s side of the vehicle, § 87(2)(b) says, “I need everything.” Then, as Police Officer sits inside the driver’s seat of the vehicle, § 87(2)(b) again says, “I need everything.”



201806761\_20181218\_1548\_DM.mp4

Approximately three minutes after § 87(2)(b) s first request, in the same video, as shown in the excerpt that is embedded below, Police Officer Ortiz emerges from the police vehicle and places his left hand on his chest, with his fingers curled inside his jacket, as he approaches § 87(2)(b) Police Officer Ortiz’s shield number is covered by his arm or hand the entire time he is walking toward § 87(2)(b) While Police Officer Ortiz is returning § 87(2)(b) s identification to him, § 87(2)(b) says that Police Officer Ortiz is trying to cover his badge. Approximately nine seconds into the clip, as Police Officer Ortiz turns around to face away from § 87(2)(b) he removes his left hand from his chest. At no point in the entire video does Police Officer Ortiz provide his name or shield number to § 87(2)(b) in any manner.



201806761\_20181218\_1548A\_DM.mp4

NYPD Patrol Guide Procedure 203-09 states that officers must provide their name, shield number, rank, and command when members of the public request them (Board Review 10).

§ 87(2)(g)  
[Redacted text block]

### Civilian and Officer CCRB Histories

- § 87(2)(b) [Redacted text block]

- § 87(2)(b) [REDACTED]
- [REDACTED]
- Police Officer Ortiz has been a member of service for three years, and has been a subject in two allegations in two prior CCRB complaints, neither of which were substantiated.  
§ 87(2)(g) [REDACTED]
- Police Officer Chin has been a member of service for three years, and has been a subject in six allegations in two prior CCRB complaints, none of which were substantiated.  
§ 87(2)(g) [REDACTED]

### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) [REDACTED] declined to mediate this complaint.
- As per the Comptroller's Office of the City of New York, as of January 7, 2019, no Notices of Claim had been filed in regard to this incident (Board Review 13).
- § 87(2)(b) [REDACTED]
- § 87(2)(b) [REDACTED]

Squad No.: \_\_\_\_\_

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
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Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
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Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date
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